

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT COURT OF NEW YORK

-----x

BOROUGH OF UPPER SADDLE RIVER, NEW JERSEY,
KAREN MILLER, ROY OSTROM, MARIA FLORIO, MARK
RUFFOLO AND LINDA MCDONALD,

Plaintiffs,

- against -

ROCKLAND COUNTY SEWER DISTRICT #1,

Defendant.

-----x

Monday,

January 10, 2011

10:10 a.m.

EXAMINATION BEFORE TRIAL OF

a Defendant, ROCKLAND COUNTY SEWER
DISTRICT #1, by and through its Witness,
DIANNE PHILIPPS, held at the
offices of Rockland & Orange Reporting,
20 South Main Street, New City, New
York, on the above time and date, before
a Notary Public of the State of New York.

ROCKLAND & ORANGE REPORTING

20 South Main Street

New City, New York 10956

(845) 634-4200

1 A P P E A R A N C E S:

2
3
4
5
6 BURKE, MIELE & GOLDEN, LLP

7 Attorneys for the Plaintiffs

8 40 Matthews Street

9 Suite 209

10 Goshen, New York 10924

11 BY: MICHAEL BURKE, ESQ.

12
13
14
15
16 PANNONE LOPES DEVEREAUX & WEST LLC

17 Attorneys for the Defendant

18 81 Main Street

19 Suite 510

20 White Plains, New York 10601

21 BY: MICHAEL L. CAREY, ESQ.

1 Dianne Philipps

2 at the time.

3 Q. That's not where they were?

4 A. At the time.

5 Q. Can you please tell me what your
6 title is with the Rockland County Sewer District?

7 A. Executive Director.

8 Q. How long have you been the Executive
9 Director?

10 A. I think since March 2004.

11 Q. How long have you been employed by
12 the Rockland County Sewer District?

13 A. Since October 1989.

14 Q. Prior to get becoming Executive
15 Director, what position did you hold with the
16 Rockland County Sewer District?

17 A. Assistant Director.

18 Q. Who was the Director?

19 A. Ron Delo.

20 Q. D-E-L-O?

21 A. Yes.

22 Q. How long were you the Assistant
23 Director?

24 A. I think it was 1994.

25 Q. On occasion I may just go back to

1 Dianne Philipps
2 give some other instructions by way of typically
3 what to expect in a deposition.

4 If you don't understand my
5 questions, please let me know, because if you
6 answer I'll assume that you understand the
7 question and your answer will be the answer.

8 Again, if you want me to rephrase
9 the question, I'll rephrase it.

10 If you need to take a break, please
11 let me know, and we'll take a break, but the only
12 caveat to that is that we cannot take a break if
13 there's a pending question. So you have to give
14 an answer, and then we can take a break.

15 Okay?

16 A. Okay.

17 Q. What are your job duties as
18 Executive Director for the Rockland County Sewer
19 District?

20 A. I guess to oversee the maintenance
21 of the -- maintenance and operation of the
22 wastewater treatment plant and the collection
23 system. Plan capital projects.

24 Q. Oversee the maintenance?

25 A. Operations and maintenance of the

1 Dianne Philipps
2 wastewater treatment plant and collection system.

3 Q. How long were you the Assistant
4 Director for the Rockland County Sewer District?

5 A. I guess it would be approximately
6 ten years.

7 Q. What was the position you held
8 before that?

9 A. Engineer III.

10 Q. How long were you an Engineer III?

11 A. Well, from 1989 to 2004.

12 Q. But I thought -- okay. Even as
13 Assistant Director you were classified as an
14 Engineer III?

15 A. No. I was Engineer III first, and
16 then became Assistant Director, and then
17 Executive Director.

18 Q. Okay. I thought you first testified
19 that you became Executive Director in March of
20 2004.

21 A. Yes. And I believe I said --

22 Q. An Assistant Director for ten years,
23 so --

24 A. That would have been 1990 something
25 that I became...

Dianne Philipps

Mr. Ostrom?

A. No.

Q. Maria Florio, do you know her?

A. No.

Q. Never spoken to her?

A. No.

Q. Mark Ruffolo?

A. No.

Q. And Linda MacDonald?

A. No.

Q. Have you spoken with anybody from the New Jersey DEP regarding the claims of the Borough of Upper Saddle River about spills into the Saddle River?

A. We have to report spills to them. I never talked about the -- this lawsuit or anything. There was never any reason to.

Q. When do you have to report spills to them?

A. Whenever we have a spill sit -- have a spill, we have a -- there's a whole list of contacts we have to make when we have a spill.

Q. And you're saying that you notified the New Jersey DEP when there's a spill that

1 Dianne Philipps

2 affects a waterway that reaches New Jersey?

3 A. Yes.

4 Q. On the occasions wherever there was
5 a spill that reached a waterway in New Jersey,
6 did your office notify the New Jersey DEP?

7 A. Some -- someone from the Sewer
8 District did, whether it was my office or
9 operations.

10 Q. Is there a protocol where you both
11 report orally and then also follow-up with a
12 spill report?

13 A. Yes.

14 Q. For the New Jersey DEP as well?

15 A. When they request a report.

16 Q. So you don't send one like you do
17 with the New York DEC?

18 A. Not -- only upon request.

19 Q. Do you know if the New Jersey DEP
20 has requested any spill reports from you
21 regarding spills into the Saddle River?

22 A. I don't recall any specific reports,
23 but I'm sure they have.

24 Q. When was the first time you reviewed
25 this Complaint; do you know?

1 Dianne Philipps

2 A. I don't recall.

3 Q. Do you know between 2006 and 2010
4 approximately how many spills have occurred in
5 the Rockland County Sewer District that have
6 affected the or that have reached the branches of
7 the Saddle River?

8 A. I don't recall. I would have to
9 review the spill reports.

10 Q. Would it be fair say that there's a
11 large number of spills from the Rockland County
12 Sewer District that have spilled, and the
13 sanitary sewer overflows have reached the Saddle
14 River?

15 A. No.

16 Q. It's not a fair statement to say
17 that?

18 A. I'd have to review the number of
19 spills that there have been, but I don't --
20 it's -- ask that again.

21 Q. Okay. I said: Would it be fair to
22 say that between 2006 and 2010 there's a large
23 number of sanitary sewer overflows that have
24 reached the Saddle River?

25 A. I believe it is not fair to say

1 Dianne Philipps

2 there's been a large amount.

3 Q. Well, what would you say as far as
4 the number of sanitary sewer overflows that have
5 reached the Saddle River, as a result of spills
6 from the Rockland County Sewer District?

7 A. I'd have to review the spill
8 reports.

9 Q. Is it fair to say that the Saddle
10 River Pump Station has been identified by your
11 District as being a problematic pump station that
12 has caused a lot of spills?

13 A. It has been a problematic station,
14 requiring more -- more frequent upgrades.

15 Q. And those are upgrades that needed
16 to be made because of system failure; correct?

17 A. It's a high head station, meaning
18 the pumps have -- have to be replaced more
19 frequently.

20 Q. Okay. By high head station, what
21 does that mean?

22 A. The pumps have to work harder. They
23 take more of a beating.

24 Q. Why do they take more of a beating?

25 A. 'Cause it's -- there's a little bit

1 Dianne Philipps

2 more vibration when they start up because of the
3 high head conditions.

4 Q. And what do you mean by high head?

5 A. It's I guess the -- the amount of
6 water that has to be moved or the height it has
7 to be moved. You know, sometimes it's less of a
8 height. But if you're going from, you know, this
9 height versus this height, it's harder to pump at
10 a higher height than a lower height.

11 (Indicating.)

12 Q. And you're indicating with your
13 right-hand higher and lower; is that correct?

14 Just so that she can get it down.

15 A. A high head station would be a
16 difference of 200 feet, 250 feet versus 40 feet.

17 Q. And that's a pump that would have
18 to -- if it's a gravity sewer system down to
19 that pump station, it would have to pump up; is
20 that a fair statement?

21 A. Yes.

22 Q. Is that what the Saddle River Pump
23 Station is?

24 A. Yes.

25 Q. It's a gravity sewer system that

1 Dianne Philipps

2 comes to it, and then it pumps back up to the
3 trunk main?

4 A. Part of it is gravity. There's also
5 a couple other pump stations that pump to the
6 Saddle River Pump Station.

7 Q. So there's a gravity connector, and
8 then there's some force --

9 A. Well, there's some force mains that
10 turn gravity, that -- ultimately it's all gravity
11 to the Saddle River Pump Station, but there are
12 two other pump stations that contribute to that
13 flow.

14 Q. What are the two other pump
15 stations; if you know?

16 A. Cherry Lane and Pine Brook.

17 Q. Have there been problems with the
18 Cherry Lane Pump Station with overflow and
19 spills?

20 A. Historically, yes. Not -- not
21 recently.

22 Q. And you said Pine Brook?

23 A. Yes, Pine Brook.

24 Q. Where is Pine Brook Pump Station
25 located?

1 Dianne Philipps

2 A. Sandra Court.

3 Q. Where is that?

4 A. It's off of -- I think it's Jean
5 Lane, which is off of Pine Brook.

6 Q. Is that anywhere near the BMW dealer
7 on Route 59?

8 A. No.

9 Q. The spills that have occurred at the
10 BMW dealer near Route 59, what pump stations
11 connect near where those spills were?

12 A. No pump stations.

13 Q. Do you know why those spills were
14 occurring near the BMW dealer by Route 59?

15 A. They only occurred during extreme
16 wet weather events.

17 Q. They only occurred during extreme
18 wet weather events?

19 A. Yes.

20 Q. So are you saying that the cause of
21 the spills near the BMW dealer on Route 59 were a
22 result of wet weather events?

23 A. Yes.

24 Q. Is there a river near the BMW
25 dealership that was affected as a result of the

1 Dianne Philipps

2 spills at Rockland County Sewer District?

3 A. I'd have to look at a map, but I
4 think it would be the Pascack Brook.

5 Q. That runs adjacent to the dealership
6 there?

7 A. I'm not sure where it runs. I'm
8 just assuming that any storm drains would
9 eventually go to some stream, and I think the
10 Pascack Brook is in that area.

11 Q. Have you been out to the pump
12 station at the Saddle River Pump Station?

13 A. Yes.

14 Q. How often have you been there?

15 A. I don't recall.

16 Q. Well, you've been working for the
17 Sewer District since 1989, can you approximate
18 how many times you've been to the Saddle River
19 Pump Station?

20 A. No.

21 Q. Is it more than ten?

22 A. Yes.

23 Q. More than 20?

24 A. Yes.

25 Q. More than 50?

Dianne Philipps

Q. The two manhole covers that are near the Saddle River Swim Club, are you familiar with those?

A. Yes.

Q. Are you familiar with those continuing to overflow and blow up?

A. When there is a -- an overflow, that's where they occur.

Q. All right. And that's a line that's connected up to the pump station; correct?

A. Yes.

Q. The pump station's on the North-East corner of the Saddle River Swim Club; is that a fair statement?

A. I'd have to look at a map.

Q. Well, the Saddle River Pump Station is on Saddle River Road; correct?

A. Right.

Q. And so is the Swim Club; correct?

A. Well, the Swim Club's behind it.

Q. Behind it. And this is off in the corner of its like parking lot; is that --

A. Yes.

Q. All right. And further down, closer

1 Dianne Philipps

2 to the pool, actually, right next to the fence,
3 that pool is where this manhole that we're
4 talking about is; correct?

5 A. Yes.

6 Q. And then further down a grade from
7 that manhole cover, there's actually two manholes
8 there; is that correct?

9 A. I believe the second one is more in
10 their parking lot.

11 Q. Okay. The one that continues to
12 blow up, is that one pipe or two?

13 A. I believe it's one pipe coming in.

14 Q. Okay. Does it have a metal cover
15 that covers two different areas? You have a pipe
16 that overflows, and also do you have one that
17 takes out odor there, or is it just one pipe?

18 A. I -- I believe there's only one
19 pipe.

20 Q. And then further down the grade is
21 the Saddle River; correct?

22 A. Yes.

23 Q. And when this overflows, it flows
24 down into the Saddle River; correct?

25 A. Yes.

1 Dianne Philipps

2 Q. And whatever is contained in the
3 sewer, the sewage and the toilet paper and
4 everything that the Sewer District has, flows
5 down into the River; correct?

6 A. Possibly. Usually during extreme
7 wet weather events there's -- there's not that
8 many solids.

9 Q. And during dry weather events, when
10 there isn't other infiltration, it's --

11 A. In that case you would have more
12 solids.

13 Q. -- it's concentrations of solids?

14 A. Yes.

15 Q. By solids you mean what?

16 A. We call it rags.

17 Q. Meaning toilet paper?

18 A. You can't really identify it as
19 toilet paper. It's just clumpy gray matter.

20 Q. Which could be also human feces?

21 A. Could be.

22 Q. Other sanitary products?

23 A. Yes.

24 Q. So when you see that it says rags
25 caused the pumps to malfunction, that means that

1 Dianne Philipps

2 it's stuff that's in the system that's caused the
3 pumps to malfunction?

4 A. Occasionally the pumps do clog due
5 to rags.

6 Q. And that's stuff that people are
7 flushing into your system; right?

8 A. Yes.

9 Q. There's also grease; correct?

10 A. Yes.

11 Q. And that grease is from restaurants
12 and homeowners?

13 A. Yes.

14 Q. Also stuff that's flushed into the
15 system?

16 A. Some of it makes its way in, yes.

17 Q. And those pollutants reach the
18 Saddle River as a result of the pump station
19 malfunctioning; correct?

20 MR. CAREY: Objection to the form
21 of the question. The witness can answer.

22 A. When a spill occurs, it is possible
23 that that would reach the Saddle River.

24 Q. And in the reports you indicate what
25 you think by way of number of gallons that have

1 Dianne Philipps
2 numbered 1768 through 1772. Documents have
3 previously been produced by your Counsel in
4 response to document demands.

5 In particular in Paragraph 3 of this
6 document referencing the sewage spill on
7 February 25, 2002 it talks about sewage flowing
8 from a catch basin to a small stream that leads
9 to a pond at Candy Mountain Day Camp. From that
10 pond, the stream ultimately flows to Lake Lucille
11 and the Hackensack River. The stream and the
12 pond were inspected by District personnel and
13 Patrick Brady, who is an engineer from the
14 Rockland County Environmental Health Department.
15 The effects of the spill did not appear to go
16 beyond the pond. The Sewer District took water
17 samples at the stream and the pond. And you
18 attach a sketch there. You go on to say, the
19 duration of the spill is not known. Neighbors in
20 the area mentioned that they had smelled odors
21 over the last month but nothing had been
22 reported. And it says, dead fish were found at
23 the pond and it appeared that they died recently.
24 It appears that most of the solids accumulated in
25 the manhole and that the liquid flowed to the

1 Dianne Philipps

2 stream and the pond.

3 There's nothing there; correct,
4 about chlorine being introduced to the pond; is
5 there?

6 A. Correct.

7 Q. Okay. So is it fair to say, based
8 on this report, that these fish died as a result
9 of the sewer -- the sewage being introduced to
10 those waterways?

11 A. Yes.

12 Q. Then it goes on to say that the dead
13 fish had been removed from the pond, and the
14 Sewer District con -- again, we're talking about
15 the pond at Lake Lucille; right?

16 A. No, it's not Lake Lucille. This is
17 a pond at the Candy Mountain Day Camp.

18 Q. Okay. Which then connects to Lake
19 Lucille, and then ultimately the Hackensack
20 River; right?

21 A. Yes. But it does say here that the
22 effects didn't go beyond the pond.

23 Q. All right. Did you have anybody
24 inspect Lake Lucille and the Hackensack River, to
25 see if there was aquatic life that had been

1 Dianne Philipps

2 affected --

3 A. Yes.

4 Q. -- by the spill?

5 A. My staff would have responded by
6 inspecting everything downstream.

7 Q. How far down did you go?

8 A. I'm sure they checked Lake Lucille
9 and they checked the Hackensack River, and looks
10 like Patrick Brady probably checked the same
11 thing too.

12 Q. But you don't know that? There's
13 nothing in the report about that; is there?

14 A. No, but usually standard operating
15 procedure is to check for impacts downstream.

16 Q. Is there anything in the report that
17 shows water samplings taken downstream?

18 A. Well, there were five locations.
19 I'm not sure which way this is flowing; upstream
20 or downstream.

21 Q. Okay. Do you know where each of
22 those locations are, as far as indicating?

23 A. There's a map that shows the
24 locations.

25 Q. Okay. So let's take a look at the

1 Dianne Philipps

2 map. Does that map show Lake Lucille at all?

3 A. No.

4 Q. Does the map show the Hackensack
5 River at all?

6 A. I'd have to look at a map. I'm not
7 sure if this is an upper branch of the Saddle --
8 the Hackensack River or not. I don't know.

9 Q. On this map, which is Bates stamped
10 number 1771, it has like a kidney shaped point in
11 the middle; correct?

12 A. Yes.

13 Q. Do you know if that is the pond that
14 we're talking about?

15 A. Yes.

16 Q. That is. All right. So those
17 samples; two, three and four, that are listed
18 were all taken from the pond; correct?

19 A. Yes.

20 Q. And samples zero and one were taken
21 further north of the pond --

22 A. Yes.

23 Q. -- on the map; correct?

24 A. Yes.

25 Q. And nothing was taken south of the

1 Dianne Philipps

2 Q. -- it says, upstream; correct?

3 A. Yes.

4 Q. Nob Hill Road; right?

5 A. (The witness nods her head).

6 Q. And then if you compare it to 1771,
7 where it has indicated zero, that's above the
8 pond; correct?

9 A. It's north of the pond.

10 Q. Right. And it says that that entry
11 was upstream.

12 So is it fair to say that it's
13 flowing downstream from zero to four? Is that a
14 fair statement, based on these entries?

15 A. It's possible, but I would have to
16 look at a map.

17 Q. If you look on 1770 it says, the
18 Sample Analysis Report, the Bates stamps are on
19 the bottom right-hand corner, and this report was
20 prepared for you; correct?

21 A. Yes.

22 Q. And it was prepared by Leo Fung?

23 A. Yes.

24 Q. Prior to me showing you this, you
25 had no recollection whatsoever of this incident

1 Dianne Philipps

2 of dead fish at this camp?

3 A. When you asked the question, I
4 vaguely thought about it, but I couldn't remember
5 any of the details until I saw this report.

6 Q. Now that I've refreshed your
7 recollection regarding this fish kill that
8 resulted from sewage infiltrating the water ways,
9 are there any other instances where you now
10 recall aquatic life being affected, affected
11 and/or killed, as a result of sewage entering
12 waterways?

13 A. No.

14 Q. Do you know if you ever restocked
15 that pond?

16 A. Yes, we did.

17 Q. Do you have any documents that deal
18 with restocking that pond?

19 A. We probably do, in the files.

20 ***

21 MR. BURKE: Okay. I'm going to call
22 for production of those documents, Mike,
23 regarding restocking the pond.

24 Q. Have you ever had any occasion to
25 restock any other ponds as a result of sanitary

1 Dianne Philipps

2 MR. CAREY: Objection as to form.

3 A. I have no idea.

4 Q. Do you know if people use the Saddle
5 River to recreate or take river walks?

6 A. I don't know specifically. I would
7 assume people do, but I've never -- I don't know.

8 Q. Would it be fair to say that after
9 spills at the Saddle River Pump Station, where
10 there's an overflow from that manhole that
11 reaches the Saddle River, there'd be higher
12 levels of fecal coliform as a result of that?

13 A. I couldn't say without sampling.

14 Q. Okay.

15 A. It depends on the type of event, if
16 it's a wet weather event or a dry weather event.

17 Q. Well, if it's a wet weather event
18 and there was -- I don't want to say no, but
19 there was a lower level of fecal coliform in the
20 River, and then it's introduced with sewage
21 overflowing from your sewer that contains fecal
22 coliform, isn't it fair to say that then there
23 would be an increase of fecal coliform in the
24 River?

25 A. It could be a factor, but during a

1 Dianne Philipps

2 rain event, when you have water washing over the
3 ground and flowing into streams, that could add
4 fecal coliform also.

5 Q. So one of the contributing factors
6 could be the sewage overflow, and there may be
7 others?

8 A. Yes.

9 Q. That's a more fair statement?

10 A. Yes.

11 Q. And do you know what else is
12 contained in the sewer system? Bacteria, is that
13 fair to say?

14 A. Yes.

15 Q. And what else? What other
16 pollutants?

17 MR. CAREY: Objection as to form.

18 Q. Are any chemicals that are contained
19 in there?

20 A. You would -- you'd find ammonia.

21 Q. Now, why would there be ammonia in
22 the sewer system? As a cleaning agent you mean?

23 A. No.

24 Q. I'm sorry?

25 A. No.

1 Dianne Philipps

2 Q. So why would there be ammonia?

3 A. From urine.

4 Q. Okay. And that also these
5 substances that are being introduced as a result
6 of the overflows, would and could affect the
7 environment; correct?

8 A. It's possible.

9 Q. So when there's been testing results
10 by the Borough of Upper Saddle River on the
11 Saddle River which has indicated higher levels of
12 fecal coliform bacteria in areas closer in
13 proximity to the spills, would it be fair to say
14 that that can be as a result of the overflows and
15 spills from the Rockland County Sewer District?

16 A. I'd have to look at the samplings
17 and the locations, the times they were taken, the
18 weather.

19 Q. All right. So let's give you a
20 little scenario. Say there was an SSO -- which
21 is the lingo for sanitary sewer overflow;
22 correct?

23 A. Yes.

24 Q. There's an SSO on April 27, 2008.
25 And there's a sampling done a few days after that

1 Dianne Philipps
2 shows a higher level of -- not even a few days, a
3 day after, it shows a higher level of fecal
4 coliform in there then what was previously there
5 two days before the spill, would it be fair to
6 say that one of the contributing factors would
7 have been the overflow and the spill from the
8 Rockland County Sewer District?

9 A. It could have been one of the
10 contributing factors. If it was a wet weather
11 event, you would have had contribution from many
12 other areas.

13 Q. But one of the contributors would be
14 the Sewer District's --

15 A. It could be one of --

16 Q. -- overflow?

17 A. -- it could be one of the
18 contributors.

19 Q. And if there was hundreds of
20 thousands of gallons of sewage overflowing, that
21 could be a greater contributor; correct?

22 A. If it was hundreds of thousands of
23 gallons, it probably would have been a wet
24 weather event and the water would have been very
25 diluted.

1 Dianne Philipps

2 Q. Even though it's diluted, it still
3 contains those --

4 A. Yes.

5 Q. -- contains the bacteria, it
6 contains the sewage, it contains the rags;
7 correct?

8 A. During a wet weather event you would
9 have less rags.

10 Q. Okay. But you still have all the
11 other bacterias and other chemicals that are
12 being introduced into the River as a result of
13 the overflows from the Sewer District; correct?

14 A. During extreme wet weather event,
15 when you have those kind of quantities, it's
16 dilute, but, yes, it would be there.

17 Q. Would you agree that as a result of
18 these chemical and sewage being introduced to the
19 River, that could affect the quality and color of
20 the flow of the River?

21 A. Can you repeat that.

22 Q. Okay. As a result of sewage being
23 introduced into the River from spills from the
24 Rockland County Sewer District into the Saddle
25 River, would you agree that that could affect the

1 Dianne Philipps

2 clarity and color of the River?

3 A. It's possible that it may affect it
4 briefly.

5 Q. And it could make it murky; correct?

6 A. It may be a contributing factor,
7 depending on if it's a wet weather event, what
8 type of event it is.

9 Q. Could it also --

10 A. Could be from other factors, too.

11 Q. Could also add some odor as a result
12 of the sewage that's being entered into there;
13 correct?

14 A. Depends on the type of event.
15 During a wet weather event I never notice any
16 odors.

17 Q. Never?

18 A. Maybe a musty kind of smell during a
19 wet weather event. But usually during a wet
20 weather event it's so dilute that...

21 Q. Grown used to it?

22 A. I -- I would not say that.

23 Q. And, again, a wet weather event is
24 something that you've described as being four
25 inches or more of rain?

1 Dianne Philipps
2 who is the Acting Water Regional Engineer for the
3 DEC; correct?

4 A. He was at the time.

5 Q. All right. He's no longer now;
6 right?

7 A. He's -- he became the Water Regional
8 Engineer, and he's been recently promoted.

9 Q. On the bottom of Page 1769, or,
10 actually, the middle of Page 1769 you list the
11 following notifications were made; Patrick
12 Brady, PE, Rockland County Environmental Health,
13 Thomas Rudolph, PE, New York State Department of
14 Environmental Conservation, United Water, and
15 it's got the hyphen SCADA, and the New York State
16 DEC Hotline; right?

17 A. Yes.

18 Q. Doesn't say anything about the New
19 Jersey DEP being notified; correct?

20 A. Correct.

21 Q. So they weren't notified of this
22 spill that resulted in death to aquatic life up
23 stream from a tributary that connects to Lake
24 Lucille and the Hackensack River?

25 A. This is far enough upstream that it

1 Dianne Philipps

2 wasn't warranted.

3 Q. But you don't know that, because you
4 didn't take any tests; right?

5 A. Typically, based on my experience,
6 this type of a spill will not affect anything
7 beyond this pond.

8 Q. But you wouldn't know that looking
9 at this data, because no tests were taken beyond
10 that body of water; correct?

11 A. Correct.

12 Q. And you wouldn't know --

13 A. We would know from visual
14 inspections downstream. We didn't see any
15 solids. We didn't see any -- I mean, this is a
16 very small stream, very small pond.

17 Q. You don't have anything that
18 indicates that inspection was done downstream,
19 where there were no solids found; correct?

20 A. There's nothing in this report, but
21 typical standard procedure would be to check for
22 any -- any problems.

23 Q. But wouldn't it be good for later on
24 you include in your reports that further
25 downstream an inspection was done and there was

1 Dianne Philipps

2 Q. I'm not asking about specific
3 spills. I'm asking about how long has the Saddle
4 River Pump Station been a problem, where spills
5 have been occurring for the Rockland County Sewer
6 District?

7 A. I thought the first part of the
8 question was with regards to odors.

9 Q. Okay. Let me just withdraw that
10 question, and then we'll get back to the odors.

11 How long have spills been occurring
12 at the Rockland County -- for the Rockland County
13 Sewer District at the Saddle River Pump Station?

14 A. Probably since it was built.

15 Q. When was it built?

16 A. I don't recall. I'm guessing in the
17 Seventies, Eighties.

18 Q. Okay. And is it fair to say that
19 within the last ten years the frequency of spills
20 at the Saddle River Pump Station has increased?

21 A. I'd have to review the reports.

22 Q. Without reviewing the reports do you
23 have any recollection of it being -- we've
24 already identified it as a problematic pump
25 station; correct?

1 Dianne Philipps

2 A. Yes.

3 Q. And by problematic pump station, we
4 mean that spills occur there more often than
5 other pump stations; correct?

6 A. Yes. I mean, some pump stations are
7 larger than others. Some pump stations have
8 different types of designs. Some of our stations
9 are much more reliable than other stations.

10 Q. So is this a less reliable pump
11 station?

12 A. It's a little more problematic. I
13 mean, when you have -- we've had more mechanical
14 failures at that station than some other
15 stations.

16 Q. Do you know why you've had
17 mechanical failures there?

18 A. Well, it's the high head situation.

19 Q. Which is part of the design; right?

20 A. Yes, that was originally how it was
21 laid out back in probably early Eighties.

22 Q. Has there been any design changes
23 made to correct the high head situation?

24 A. No. That would require a new pump
25 station.

1 Dianne Philipps

2 Q. What would it cost to put in a new
3 pump station?

4 A. Maybe six million.

5 Q. That's just a guesstimate?

6 A. Well, you have to find the land for
7 it. Purchase the land.

8 Q. You'd have what? I'm sorry?

9 A. You'd have to find land for it. To
10 decrease the head, you'd have locate a pump
11 station somewhere between Saddle River and Twin
12 Lakes.

13 Q. Twin Lakes is further which way?

14 A. North.

15 Q. Where is the Twin Lakes Pump
16 Station?

17 A. Corner of South Monsey and Twin
18 Lakes Drive.

19 Q. Is that also a problematic pump
20 station?

21 A. It's the same design as Saddle
22 River.

23 Q. What design is that?

24 A. Dry well, wet well, three pumps.
25 It's probably less problematic, but it has the

1 Dianne Philipps

2 same types of check valves.

3 Q. What are some of the other designs
4 to pump stations that you have in your system?

5 A. We have ten that are basically the
6 same design as -- actually, seven are the same
7 design as Saddle River, Twin Lakes.

8 Q. Okay. What are those seven; do you
9 know?

10 A. Cherry Lane, Pine Brook, Saddle
11 River, Twin Lakes, Pascack, South Pascack.
12 That's six; right?

13 Q. That's six. You have Cherry Lane,
14 Pine Brook --

15 A. West Nyack.

16 Q. -- Twin Lakes.

17 A. West Nyack.

18 Q. Okay. And the West Nyack one also
19 has been identified as problematic?

20 A. No.

21 Q. No. Which of these seven have been
22 identified as problematic pump stations?

23 We already know about Saddle River.

24 A. Saddle River and Twin Lakes.

25 Q. Cherry Lane at one point, but no

1 Dianne Philipps

2 A. Right.

3 Q. When the upgrade was done in 1996 of
4 the Saddle River Pump Station, how much was that
5 cost for those upgrades?

6 A. Like I said, it was -- it was bid
7 out with two other pump stations. I'd have to
8 look at the overall cost and look at the
9 scheduled values and see what Saddle River was.

10 Q. Why wasn't a pump added to the
11 Saddle River Pump Station at that time?

12 A. We did. We went from two pumps to
13 three pumps.

14 Q. Do you know if that corrected --
15 well, were you having problems at the Saddle
16 River Pump Station, as far as capacity and you
17 needed to add another pump?

18 A. I believe it was more a reliability
19 issue. It's always better to have more than two
20 pumps. If you have one pump out for repair, then
21 you're down to one pump. If something happens to
22 that one, so it's just to make it a more reliable
23 station just to add a third pump.

24 Q. Do you know if that corrected the
25 reliability issues at the Saddle River Pump

1 Dianne Philipps

2 Station?

3 A. I'd have to review the problems
4 before that -- before that. If there were -- I'd
5 have to look at the reports, see the history of
6 it.

7 Q. Okay. But as far as you know,
8 there's still more spills that were occurring at
9 the Saddle River Pump Station, and it was still
10 after 1995 labeled as a problematic pump station;
11 correct?

12 A. Yes.

13 Q. Now, getting back to neighbors of
14 locations in close proximity to where spills
15 occur.

16 Would it be fair to say if there's
17 continued spills where sewage is being introduced
18 to a waterway and there are odors emanating from
19 that, that that would affect a person's property
20 value?

21 A. Like I said, spills generally are
22 not continuous or lengthy.

23 Q. But if they're continually
24 occurring, wouldn't you agree that if sewer
25 spills were continuing to occur and you lived in

1 Dianne Philipps

2 but we since -- there's a product that we're
3 using to prevent the odors from the pump station.

4 Q. What's the product that you're using
5 to prevent the odors for the pump station?

6 A. It's called BIO-CAT.

7 Q. Is that a -- how is that introduced
8 into the pump station?

9 A. It's introduced upstream of the pump
10 station.

11 Q. Where?

12 A. I believe Pine Brook, but I'd have
13 to double check.

14 Q. Have you been out to the Manhole
15 10019 at all?

16 A. Which one is that?

17 Q. It's on -- do you know a man by the
18 name of David Schneider?

19 A. Yes.

20 Q. Do you know the manhole that's near
21 his home?

22 A. Yes.

23 Q. Okay. There were problems with that
24 manhole overflowing; correct?

25 A. Yes.

1 Dianne Philipps

2 probably.

3 Q. But that's not far from the Swim
4 Club; right?

5 A. It's more towards 59. It's not
6 immediately close to the Swim Club.

7 Q. What line is that on? What sewer
8 line?

9 A. It's the beginning of the Ramapo
10 interceptor.

11 Q. Does that connect into the Saddle
12 River Pump Station at all?

13 A. No. No.

14 Q. So the beginning of Ramapo
15 interceptor, that's where it flows down from
16 parts of Spring Valley, Monsey, New Square?

17 A. Well, Saddle River pumps to Twin
18 Lakes. Twin Lakes pumps to the Ramapo
19 interceptor, the beginning of the Ramapo
20 interceptor.

21 Q. Is there --

22 A. The Ramapo interceptor flows down,
23 and then ultimately some other interceptors come
24 into it.

25 Q. Okay. So some of the other

1 Dianne Philipps

2 interceptors are some of the other villages along
3 the way?

4 A. Right. Interceptors from Spring
5 Valley go into the Ramapo Interceptor.
6 Interceptors from New Square.

7 Q. Working their way all the way down
8 to the treatment facility in Orangeburg?

9 A. Yes. And you have other
10 interceptors that come in along the way.

11 Q. Are these all gravity?

12 A. Yes.

13 Q. So by gravity, that means they's
14 pitched so that they flow down; correct?

15 A. Correct.

16 Q. And when they're unable to be
17 constructed that way, pumps are installed;
18 correct?

19 A. Correct.

20 Q. So that's why we have the pump
21 stations in Saddle River, Cherry Lane, along the
22 borders of New Jersey, where they're flowing down
23 to there; is this a fair assessment of how it's
24 kind of setup?

25 A. Right. It's flowing gravity towards

1 Dianne Philipps

2 New Jersey, and then it's pumped back up.

3 Q. Okay. And when there's too much
4 flowing down towards New Jersey, that can't be
5 handled by those pumps, they can overflow; right?

6 A. We experience that during extreme
7 wet weather events.

8 Q. Okay. But you also experience
9 overflows during dry events?

10 A. Mechanical or electrical failures.

11 Q. And those mechanical or electrical
12 failures that result in spills, there would be a
13 higher concentration of sewage; is that a fair
14 statement?

15 A. A higher concentration of sewage
16 where?

17 Q. Flowing out of your system. If
18 there's a mechanical failure and there hadn't
19 been a wet weather event, that --

20 A. It would -- the impact on a river
21 would depend on the duration of it.

22 Q. Correct. The duration of it, but
23 it's a higher concentration than a diluted form
24 during a wet weather event?

25 A. Correct.

1 Dianne Philipps
2 monitor large bakeries. There's a couple
3 pharmaceutical companies. Palisades Mall is --
4 is one.

5 Q. Because of the restaurants that are
6 there?

7 A. Because of the potential for a large
8 amount of grease. The Palisades Mall also they
9 covered some old landfills, so they have a permit
10 because of the leachate that they contribute to
11 our system. Landfills have leachate. They're on
12 the pretreatment program.

13 Q. So the landfill in Unincorporated
14 Town of Ramapo, does that have a permit?

15 A. Yes.

16 Q. Who owns that?

17 A. I believe it's the Town of Ramapo.

18 Q. Who owns the Saddle River Pump
19 Station?

20 A. Rockland County Sewer District.

21 (Whereupon, there was a recess
22 taken.)

23 (Whereupon, the requested portion
24 was read by the Reporter.)

25 Q. Was there ever any discussion about

1 Dianne Philipps

2 You know.

3 Q. Do you know if after there's been
4 any spills that have reached the Saddle River,
5 whether your Rockland County Sewer District took
6 any water samples of the Saddle River?

7 A. I don't recall.

8 Q. Do you know if -- well, I can tell
9 you this, no water samples have been produced by
10 your -- in this litigation that have been done by
11 the Rockland County Sewer District as to the
12 Saddle River after spills have been effected.

13 So you wouldn't know that the level
14 of the bacterial coliform that's been introduced
15 because no testing has been done; correct?

16 A. Well, I think there's -- there's
17 prob -- I know on-line there is some data, some
18 reports and studies of things on the Saddle
19 River.

20 Q. On-line from whom?

21 A. I'm sure there's organ --
22 environmental organizations in New Jersey that do
23 sampling and monitoring.

24 Q. I'm asking about you guys though.
25 You haven't --

1 Dianne Philipps

2 A. We --

3 Q. You didn't do any. You didn't take
4 any samples.

5 A. I don't recall us ever taking any
6 samples. I do remember Googling and looking at
7 some information. I don't know what I looked at.
8 That was probably a couple years ago.

9 Q. So for all the spills that have
10 occurred for the Sewer District that have reached
11 the Saddle River, even contained in your own
12 reports there haven't been any samplings done as
13 to the level of pollutants that have reached the
14 water as a result of those spills by the Rockland
15 County Sewer District; correct?

16 A. No. If we ever did any sampling, it
17 would have been just a study or something, but I
18 don't recall ever doing anything like that.

19 Q. And you did do a sampling when we
20 saw the prior case that I showed you; Plaintiffs'
21 Exhibit 1, with the fish kill; right?

22 A. Right.

23 Q. So it is something you're capable of
24 doing; right?

25 A. Yes.

1 Dianne Philipps

2 Q. When there's a spill, what does the
3 Sewer District do by way of cleanup?

4 A. If there are any solids, they're
5 raked up and removed. The area might be washed
6 down and lime would be applied.

7 Q. Okay. If the area is washed down,
8 is it captured in any way, or is it just watched
9 down into the River, if it's downgrade?

10 A. Well, they would rake up any solids
11 before washing it.

12 Q. Okay. But you rake up the solids,
13 and then you watch it down; right, before you
14 apply the lime; correct?

15 And in washing it down, if some of
16 the sewage has seeped into the soils when you're
17 washing it down, that would run down into the
18 River again; right?

19 A. It could. I'd have to see under
20 what circumstances they washed down. I'm not
21 sure that they do that all the time.

22 Q. But you don't setup any kind of
23 mechanism to capture what you're doing when
24 you're cleaning up?

25 A. They may use hay bales.

1 Dianne Philipps

2 Q. As far as you know, do they use hay
3 bales when they're cleaning up at the Saddle
4 River Pump Station?

5 A. They may have. I don't -- I don't
6 specifically know for sure.

7 Q. Do you know if a berm has been put
8 into place as a result of the settlement with the
9 Swim Club?

10 A. I don't recall.

11 Q. And if a berm has been put into
12 place, that would direct the flow from overflows
13 so it wouldn't reach their property, but would go
14 even more directly into the River; correct?

15 A. Correct.

16 Q. Do you know who put the berm in
17 there?

18 A. I don't recall.

19 Q. Do you know if it was the Sewer
20 District that did that?

21 A. I don't recall. I would assume --

22 Q. It was --

23 A. -- we would or a contractor would
24 have done it.

25 Q. Do you have the capabilities of

1 Dianne Philipps

2 putting in blacktop and digging out a berm?

3 Does the Sewer District have the
4 equipment and people to do something like that?

5 A. Yes.

6 Q. All right. Have you been out to the
7 Swim Club lately?

8 A. Trying to think of the last time I
9 was out there. Maybe within the last two years.

10 Q. Have you ever been out there during
11 a spill?

12 A. I would imagine I -- I would have at
13 some -- some point. Not recently.

14 Q. Do you recall --

15 A. Not recently.

16 Q. -- do you recall how often you've
17 been out there during a spill at the Swim Club?

18 A. I would say at least once.

19 Q. What do you recall seeing when you
20 were out there during that spill?

21 A. I don't know if I remember
22 actually -- probably seen more photos than I've
23 seen actual spill out there. I recall one time
24 it was like a rain event, snow, just kind of
25 seeing the ponding in the parking lot, but I

1 Dianne Philipps

2 then in the second to last column it lists a
3 number in the thousands there, on this one that
4 we're talking about it says 19,000; correct? The
5 046737 spill?

6 A. Okay.

7 Q. Do you see that, where it says
8 19,000, on the far right, if you bring it all the
9 way over?

10 A. Okay. Yes.

11 Q. And it says, Lake DeForest is being
12 the affected water body?

13 A. Yes.

14 Q. Well, if we go above that, the three
15 entries above that you see the first one that
16 says, December 29, 2003?

17 A. Yes.

18 Q. It says, resident file? Do you see
19 that?

20 A. Yes.

21 Q. And it lists the SSO, which, again,
22 is sanitary sewer overflow; right, and it's got
23 the Manhole 10019, that's the South Monsey
24 manhole that we're talking about by Dave
25 Schneider; right? Is that the same manhole?

1 Dianne Philipps

2 A. Yes.

3 Q. It says, rain. And then it's got a
4 question mark as to the number of gallons, and
5 the affected waterway being the Saddle River?

6 A. Yes.

7 Q. So we don't know what the amount of
8 gallons that were introduced into the Saddle
9 River, but we do know that it was introduced to a
10 tributary, at least according to this chart,
11 being the Saddle River?

12 A. Well, I have to look and see if we
13 have a spill report on file for that day, to see
14 if, in fact, there was a spill, 'cause that's --
15 I see there's -- this refers to some letters from
16 Gene Yetter to myself. This one does not. So I
17 don't -- I can't speak on that one, unless I find
18 and see if there's a spill report.

19 Q. Okay. Well, it also lists on some
20 indication where it says, resident file, Swim
21 Club file.

22 Do you know if the Sewer District
23 maintains files that are called resident files or
24 Swim Club files?

25 A. No.

1 Dianne Philipps

2 Q. They don't; or you don't know that?

3 A. I'm pretty sure we don't have a Swim
4 Club -- we probably have a -- any correspondence
5 with regards to the Swim Club would probably be
6 in our Saddle River Pump Station file.

7 Q. So you have a specific file that's
8 labeled, Saddle River Pump Station?

9 A. Yes. All of our pump stations have
10 a file.

11 Q. What's contained in that file?

12 A. Just anything with regard to that
13 pump station.

14 Q. Okay. So it would have spill
15 reports?

16 A. Yes.

17 Q. Maintenance records?

18 A. Probably not regular maintenance
19 records. If there is something spec -- something
20 happened at that station that was unusual or we
21 did a shut down and we want to document how we
22 did that shut down, you know, bypass pumping or
23 something, it would be in that file.

24 Q. The Saddle River Pump Station, is
25 there any kind of video camera that's running

1 Dianne Philipps

2 there?

3 A. No. Not that I'm aware of. Not
4 that we've installed.

5 Q. All right. There are residents that
6 have been active in sending you photographs of
7 spills there; correct, or neighbors?

8 A. There have been times someone has
9 e-mailed me some photos. I don't know if it was
10 of Saddle River or not.

11 Q. How many times has that occurred?

12 A. I think Dave Schneider sent me some
13 e-mails of -- sent me some photos of the 1019 at
14 one time.

15 Q. Which is the manhole near his house;
16 right?

17 A. Yeah, I seem to recall getting -- I
18 don't know if I got an e-mail from him or he
19 e-mailed it to somebody who e-mailed it to me.

20 Q. Okay. And if we go down further on
21 this chart that's attached to the Complaint, we
22 see again the next two entries on this chart it
23 has a spill or a date listed 8/25/04, it says
24 Swim Club file, SSO in parking lot Saddle River
25 Swim Club, rain, and then again the affected

1 Dianne Philipps

2 Q. Okay. Let's go down a bit more on
3 this, and then we're going to go to some other
4 charts.

5 MR. CAREY: I think we're going to
6 need to break.

7 MR. BURKE: You need to break.
8 Okay.

9 (Whereupon, there was a lunch recess
10 taken.)

11 MR. BURKE: Can you mark this,
12 please, as 3.

13 (Plaintiffs' Exhibit 3, Bates Stamp
14 Number 1461 through 1464, was marked for
15 identification.)

16 Q. I'm going to show you what's been
17 marked Plaintiff's Exhibit 3. And ask if you
18 recognize this document?

19 (Document submitted.)

20 A. I don't know that I've seen this.

21 Q. Is that a chart of spill reports?

22 A. It appears to be.

23 Q. Do you know if that's similar to the
24 spill report charts that are contained on the web
25 site of Preserve Ramapo?

1 Dianne Philipps

2 A. I don't know. I haven't seen it.
3 I've looked at spill reports on the web site. I
4 haven't looked at a chart like this on the web
5 site.

6 Q. Okay. And this chart lists the
7 locations, dates, spillage in gallons, manholes
8 and then fresh water that's affected as a result
9 of those spills?

10 A. It appears to.

11 Q. This is similar information that's
12 contained on spill reports that the Sewer
13 District maintains; correct?

14 A. Yes.

15 Q. And that's also spill reports that
16 you have to provide to the New York State DEC?

17 A. Yes.

18 Q. And on this report it appears that
19 there's spills from February of 2000 through
20 April 18th of 2005; is that correct?

21 A. Yes.

22 Q. Okay. And, also, this was documents
23 that were produced in our initial production,
24 Bates Stamp Number 1461 through 1464. And, for
25 example, this is the only copy I have, so I'm

1 Dianne Philipps
2 developer would have to look at the downstream
3 before they would do those projects.

4 Q. Okay. And then there came a time
5 that the Department of Health said there's
6 capacity issues, at least as to New Square?

7 A. Correct.

8 Q. Do you know when that occurred; when
9 the Department of Health put that into place?

10 A. No, I do not.

11 MR. BURKE: Can you mark this,
12 please.

13 (Plaintiffs' Exhibit 5, Bates Stamp
14 Number 1476 through 1478, photographs, was
15 marked for identification.)

16 Q. I'm going to show you what's been
17 marked now as Plaintiffs' Exhibit 5. It's Bates
18 Stamp Number 1476 through 1478.

19 Plaintiffs' Exhibit 5 is three Bates
20 stamps number 1476 through 78, were produced in
21 our initial production and contain two
22 photographs on each page.

23 I'm going to ask you to take a look
24 at those.

25 A. Okay.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Dianne Philipps

Q. Do you recognize what those photos depict in Plaintiffs' Exhibit 5?

A. It's the -- I can see that that's the Swim Club. That's one of the chambers that typica -- or overflows during wet weather events.

Q. And you're indicating the bottom picture on Plaintiffs' Exhibit 4 shows the Swim Club; correct?

A. Yeah, that looks like the Swim Club.

Q. Next to the Swim Club is the manhole that continues to overflow next to the Swim Club; is that correct?

A. That is the manhole where overflows occurred.

Q. And that also shows white powdered substance from the manhole down towards where the River is; correct?

A. It could be.

Q. You don't know if that's lime that's been applied?

A. It could be. I mean, from this photo, I -- it could be lime.

Q. Well, you don't see any snow or anything anywhere else; do you?

1 Dianne Philipps

2 A. Right.

3 Q. Well, we'll go to 1477, which shows
4 a white substance on top of the manhole cover,
5 which is a picture on the top portion of 1477,
6 Plaintiffs' Exhibit 5, and a trail of white
7 substance all the way down towards the River.

8 A. That -- that could be lime.

9 Q. Okay. Which would be applied after
10 a sewer overflow?

11 A. Yes.

12 Q. And this actually has two metal
13 covers on it; right?

14 A. Yeah. It's a strange chamber.

15 Q. What --

16 A. It's not a typical manhole.

17 Q. Why is it like that?

18 A. I don't know.

19 Q. Do you know when it was installed?

20 A. Probably Seventies or Eighties.

21 Q. Do you know if anything was done to
22 address -- you said it's strange, meaning that
23 it's not typical of the Sewer District to have a
24 chamber like that?

25 A. No, it's not typical.

1 Dianne Philipps

2 Q. Is this one of the few chambers that
3 you have that's like that?

4 A. It's probably the only chamber we
5 have that's like that.

6 Q. Do you know if there were ever any
7 studies done to change that chamber so it
8 wouldn't be the only chamber that's like that in
9 your system?

10 A. I'm not sure if anyone's looked at
11 it or not. I'm not sure why it's like that.

12 Q. Do you think that the design or do
13 you think that because of the way that that
14 chamber is causes it to overflow more than other
15 chambers in your system?

16 A. It's possible.

17 Q. But yet you don't recall, as you sit
18 here today, any studies that were done to address
19 the design of that chamber or replacing that
20 chamber?

21 A. I'm not sure if anything's been done
22 or not.

23 Q. But if anything was done, you'd have
24 documents to support that; right?

25 A. Yes.

1 Dianne Philipps

2 handwriting underneath that, if you could read
3 it, it says, cleanup -- cleanup trail from the
4 sewer overflow right into East Saddle River.

5 A. Yes.

6 Q. And above that lists, it just says,
7 East Saddle River in handwriting, as well?

8 A. Yes.

9 Q. I'm going to show you what's been
10 marked as Plaintiffs' Exhibit 6.

11 (Document submitted.)

12 Q. Do you recognize what's depicted in
13 Plaintiffs' Exhibit 6.

14 A. I really can't tell. I mean, that's
15 a manhole with busted up road.

16 Q. Do you know if that's the manhole
17 near David Schneider's house? Does it look like
18 10019?

19 A. It could be, 'cause I know it's in
20 that location of the road, adjacent to a graveled
21 area, Saddle River Road is it -- looks somewhat
22 like that.

23 Q. At least the manhole that's depicted
24 in that picture shows that the road's all busted
25 up next to it?

1 Dianne Philipps

2 A. Right.

3 Q. Do you have any idea what could have
4 caused that? Could an eruption have caused that
5 from the sewer main?

6 A. Yes.

7 Q. And you also see that, at least --
8 it's not a great picture, but the picture right
9 below that it appears that there's flooding in
10 the area, the two pictures below that, where that
11 manhole was?

12 A. Based on that photo, I really can't
13 say.

14 Q. Okay. Just as the Department of
15 Health is charged with enforcing their health and
16 safety laws, do you know if it's also the Borough
17 of Upper Saddle River's obligation to their
18 residents to enforce their health and safety
19 laws?

20 A. I'd assume so.

21 Q. In Plaintiffs' Exhibit 1, which is
22 the Second Amended Complaint, on Page 10 it lists
23 A through O under permitted discharges dating
24 from August 23rd through March 2007.

25 Do you see those?

1 Dianne Philipps

2 A. Yes.

3 Q. Now, according to your SPDES permit
4 any discharge into a water body would be an un
5 permitted discharge of sewage; correct?

6 A. Yes.

7 Q. And if we look at the pages attached
8 to the Complaint, there are a number of letters
9 of Notices of Intent to Sue. Page 3 of the
10 January 18, 2008 Notice of Intent to Sue, that's
11 a letter from -- it's from me to the Sewer
12 District, New York DEC, the New Jersey DEP, and
13 the United States Environmental Protection
14 Agency.

15 And I'll jump to Page 2. It says
16 that, raw sewage discharged from the Sewer
17 District from locations attached contain the
18 following pollutants: Biological material.

19 Is it fair to say that your
20 discharges contain biological material?

21 A. Yes.

22 Q. Organic matter, exerting chemical
23 and biological oxygen. I'm sorry. Let me finish
24 that. Organic material exerting chemical and
25 biological oxygen demands in the waters.

Dianne Philipps

A. Yes.

Q. Fecal coliform bacteria?

A. Yes.

Q. Nutrients?

A. Yes.

Q. Including nitrogen and phosphorus?

A. Yes.

Q. Settleables suspended and dissolved solids, including toilet paper?

A. Yes.

Q. Sewage solids?

A. Yes.

Q. Salts?

A. Yes.

Q. Metals?

A. Yes.

Q. Solid waste?

A. Yes.

Q. Pathogens?

A. Yes.

Q. Disinfectants?

A. Yes.

Q. Such as permamag --

A. Permanganate.

1 Dianne Philipps

2 A. I -- I don't know what you mean by
3 create sludge.

4 Q. Okay. It could be -- the
5 introduction of these materials could be harmful
6 to aquatic life?

7 A. I guess it would depend on the
8 concentration.

9 Q. And we saw that it was harmful to
10 aquatic life in the instances that indicated
11 those fish kills; correct?

12 A. Well, that one situation with the
13 pond.

14 Q. Isn't it fair to say that the
15 introduction of these chemicals and foreign
16 substances into a water body that maintains
17 aquatic life, that could be harmful to that
18 aquatic life?

19 A. It could be in certain
20 concentrations.

21 Q. Okay.

22 A. I would think less so in a flowing
23 stream than in a small pond.

24 Q. But it still could affect aquatic
25 life?

1 Dianne Philipps

2 A. Depending on the concentration.

3 Q. Turning to Page 3. I beg your
4 pardon. I think it starts at Page 2 and
5 continues onto Page 3. It lists spills into the
6 waters of the United States that were in
7 violation of your SPDES permit. And it talks
8 about raw sewage discharge from the adjacent
9 Cherry Lane Pump Station, and lists a number of
10 dates; August 27, 28 and November 8th. And then
11 it talks about next raw sewage discharge from a
12 manhole at or adjacent, 64 Cherry Lane, on
13 dates, included, but not limited to.

14 If these spills occurred on these
15 dates listed in this Page 3 and four, continued
16 onto Page 5 of the Notice of Intent to Sue, those
17 would all be violations of your SPDES permit if
18 they reached waters of the United States;
19 correct?

20 A. They would be, yeah. I don't know
21 that they are. I'd have to review the spill
22 reports. I don't -- I don't know -- I don't know
23 the accuracy of these dates.

24 Q. All right. But if they were
25 accurate, they would be in violation of your

1 Dianne Philipps

2 SPDES permit; right?

3 A. I'm not sure.

4 Q. But before you said --

5 A. Well, we have a permit to discharge
6 from our wastewater treatment plant.

7 Q. Right.

8 A. We do not have a permit to
9 discharge --

10 Q. To discharge from manholes to pump
11 stations; correct?

12 A. But I don't know that the DEC has
13 ever, other than the Consent Order, never really
14 issued violations for specific events.

15 Q. No, they didn't. But you don't have
16 a permit that allows you to have these
17 discharges; correct?

18 A. Correct.

19 Q. So that your only permit was from
20 your wastewater treatment plant, and any other
21 discharges that enter a waterway would be in
22 violation of your permit; correct?

23 A. Correct.

24 Q. Do you know when the Consent Order
25 was entered into?

1 Dianne Philipps

2 A. One of many.

3 MR. BURKE: All right. Let's take a
4 break.

5 (Whereupon, there was a recess
6 taken.)

7 MR. BURKE: I think we left off
8 where I showed you the Consent Decree, to
9 refresh your recollection as to when then
10 Consent Decree was entered into. It was
11 May 9th of 2006.

12 I'm going to show you now what's
13 been marked -- I'll have marked as
14 Plaintiffs' Exhibit 8. It's Bates stamped
15 PLDW 56 through 104. And it's indicated,
16 Spills 2006 file.

17 (Plaintiffs' Exhibit 8, Spills 2006
18 file, Bates stamped PLDW 56 through 104,
19 was marked for identification.)

20 Q. I'm just going to direct you to
21 certain portions of this. Bates stamp number 58.
22 It's a memo to you from Gene Yetter listing a
23 number of spills that occurred on November 7th
24 and 8th; correct?

25 A. Yes.

1 Dianne Philipps

2 Q. All right. And it lists spills, the
3 second one down is Cherry Lane, South Monsey
4 Road; correct?

5 A. Correct.

6 Q. All right. And in the second
7 paragraph in this memo from Gene to you it says,
8 an estimated 32,000 gallons of sewage overflowed
9 from the Cherry Lane Pump Station?

10 A. Well, it's overflowing from
11 manholes in the vicinity of the Cherry Lane Pump
12 Station.

13 Q. Okay. And they said that the
14 investigation found intermittent problems with
15 the pump control PLC at the Cherry Lane Pump
16 Station; correct?

17 A. Correct.

18 Q. You don't know the full amount of
19 the rain that occurred during this time period;
20 do you, or does it indicate?

21 A. Well, it indicates in the first
22 paragraph that there's three inches of rain over
23 several hours, and -- but this problem at the
24 Cherry Lane Pump Station wasn't due to the rain.
25 It was a due to a pump control problem.

1 Dianne Philipps

2 Q. Okay. Which was a mechanical
3 failure?

4 A. More of an electronic control
5 failure.

6 Q. But, nonetheless, not as a result of
7 heavy rain, it was as a result of equipment
8 failure?

9 A. Correct. The -- I'm -- I'm thinking
10 what this was is the pump probably wasn't
11 ramping up to full speed. It was probably
12 running at a lower speed. The pump controls
13 weren't calling it to come on or ramp up to a
14 higher speed.

15 Q. And then the next paragraph it says
16 at 4:35 p.m. November 8th storm watch crews
17 identified Manhole 10019, South Monsey Road.

18 That's, again, the one that's near
19 Mr. Schneider's house; correct?

20 A. Yes. Correct.

21 Q. Sporadically overflowing. It says,
22 no blockage found down street piping. Subsided
23 around 2:30 a.m. on November 9th. Total estimate
24 overflow at that location was 4000 gallons?

25 A. Correct.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Dianne Philipps

Q. The last paragraph indicates that the Strawtown Road spill occurred several feet from stream of Lake DeForest Dam, and that water course is a tributary to the Hackensack River?

A. Yes.

Q. The next paragraph, the last -- second to last sentence it says, 20,000 gallons of dilute sewage flowed into the Pascack Brook as a result of that overflow?

A. Yes.

Q. The next Bates stamp, 60.

A. Yes.

Q. The last sentence of the first paragraph says that an estimated 1500 gallons were discharged from Manhole 10118 into a tributary of the Saddle River?

A. Yes.

Q. And this is the Twin Lakes Pump Station; right?

A. Yes.

Q. All right. And there's no indication of any rain event here; correct?

A. Correct.

Q. And that this was a operation issue

1 Dianne Philipps

2 or a equipment failure?

3 A. Yes.

4 Q. So as a result of that equipment
5 failure, the 1500 gallons of discharged sewage
6 more than likely wasn't diluted?

7 A. Correct.

8 Q. Are you familiar with any of the
9 spills that occurred from the Cherry Lane area
10 where it flowed into the Cherry Brook, which then
11 flowed into Lake Oratam?

12 A. Yes, I believe there was a spill
13 related to vandalism.

14 Q. That's what you've attributed it to?
15 The District attributed it to possible
16 vandalism; correct?

17 A. Correct.

18 Q. And that was because there was a
19 cinderblock found in that manhole?

20 A. Yes.

21 Q. But you don't know for certain it
22 was vandalism, that's what it's been attributed
23 to; right?

24 A. Someone had to put it there.

25 Q. Okay. But it doesn't necessarily

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Dianne Philipps

mean it was a vandal, it could have been someone who was working on the manhole; correct?

A. No one was working on the manhole. There's no cinderblock. No -- no cinderblock construction of the manhole.

Q. And it wasn't a cinderblock from within the manhole itself?

A. No.

Q. Do you know how many gallons of raw sewage flowed as a result of that vandalism?

A. I'd have to review the spill report.

Q. Okay. I'm going to direct your attention to, again, the PLDW is an indication of documents that were produced by your attorney in response to our demands, number 71 there's an e-mail. I guess let's look at 70 first, because 70 is a letter from the Village Clerk, Village of Airmont to you. And it's got the enclosure, which is the e-mail 71. And in particular the second to last paragraph talks about FOILED documents in the area of the site of another spill on October 3rd, 2004, 50,000 gallons of raw sewage.

Do you see that?

1 Dianne Philipps

2 A. Yes.

3 Q. Now, I think there were some reports
4 of at least a giser of raw sewage, but I think
5 you guys denied that possibly occurring; correct?

6 A. Correct.

7 Q. And by I mean you guys, collectively
8 the Sewer District; correct?

9 A. Correct.

10 Q. Did you ever make an estimate, if
11 you look at 75, Bates stamp number 75,
12 Plaintiffs' Exhibit 8, that's a memo from Michael
13 Saber, he's an Assistant Director to you, the
14 Executive Director, dealing with the spill from
15 August 27th and 28th.

16 Do you know how many gallons you
17 estimated resulted from that spill?

18 A. I believe the report says 4,000.

19 Q. For that whole time period is what
20 the estimates were determined?

21 Who made that determination; do you
22 know?

23 A. Well, Mike Saber prepared the
24 report, but it might have been in conjunction
25 with some line crew staff.

1 Dianne Philipps

2 Q. You can't tell, though, from this
3 copy, though, or anything like that?

4 A. Well, it was a partial blockage is
5 what was found, and they -- they probably
6 inspected the downstream line, saw that it was
7 still flowing, so it was -- it was a partial
8 blockage.

9 Q. In the first paragraph it says, upon
10 investigation no overflow was witnessed and an
11 odor was coming from the pump station.

12 So as a result of that spill there
13 was odor coming out. And there was no rain event
14 here; right?

15 A. Well, we --

16 Q. At least indicated.

17 A. This was not a rain event, but we do
18 have odors in some of our pump stations, but not
19 necessarily due to this overflow. We use -- like
20 I said, we use the BIO-CAT, odor control
21 products, try to address the odors of pump
22 stations.

23 Q. Right. But there was an odor
24 complaint, and it says possibly due to a sewer
25 overflow near the Cherry Lane Pump Station.

1 Dianne Philipps

2 See that first sentence?

3 A. Right.

4 Q. Okay. Do you know if anyone was
5 ever engaged by the Rockland County Sewer
6 District to do an independent review of the
7 documents to make a determination or --

8 MR. BURKE: Withdrawn.

9 Q. Do you know if anyone was engaged,
10 like an outside engineer, to assess what the
11 amount of spill was that occurred August 27th,
12 28th of 2006 at the Cherry Lane Pump Station?

13 A. I seem to recall using Sterns and
14 Wheeler for something, but I'm not sure if it was
15 this one or not.

16 Q. Do you know if they rendered an
17 opinion as to this?

18 A. I don't recall. I remember Sterns
19 and Wheeler looking into something for us. I
20 don't remember if it was this one or something
21 else.

22 Q. Do you know if their opinion was in
23 accordance with your estimate of 4,000 gallons or
24 did it far exceed?

25 A. I don't recall. I'd have to...

1 Dianne Philipps

2 Q. If it did far exceed the estimates
3 in your report, would you amend this report?

4 A. Yes.

5 Q. Okay. So since there's no
6 amendment, would it be fair to say that you
7 believe that it didn't contradict this finding or
8 this estimation?

9 A. Well, there might be this report,
10 then there might be another report later dated.
11 I -- I don't recall.

12 Q. And you don't know what the
13 methodology was employed by the Sewer District to
14 arrive at that number; correct?

15 A. It may have been an estimate by the
16 line crew that it was a partial blockage. It
17 might have just been slowly overflowing.

18 And I believe this report mentioned
19 it was intermittent. Maybe they witnesses that
20 it was on and off, maybe through the night it --
21 during the times of lower flow, parcel blockage
22 wasn't causing an overflow.

23 Q. Okay. Turn to Bates Stamp
24 Number 88.

25 And this is a report from Gene

1 Dianne Philipps

2 Yetter to you, dated December 2nd, 2005, but it
3 indicates it was revised January 27th, 2006. And
4 it talks about a sewage spill Saddle River Pump
5 Station, 754 Saddle River Road in Monsey.

6 Do you see that?

7 A. Yes.

8 Q. And, again, there's no indication of
9 any kind of wet weather, so this would, at least
10 from reading this, indicate it was a dry
11 weather --

12 A. Correct.

13 Q. -- spill?

14 And it reports that this dry weather
15 spill quantity was estimated at 6,000 to 10,000
16 gallons?

17 A. Yes.

18 Q. And then further down it says that,
19 the last sentence of this says, a small quantity
20 ponded near the parking lot, and a small
21 percentage drained into the Saddle River?

22 A. Yes.

23 Q. Affected areas were cleaned,
24 disinfected with a small quantity of lime.

25 It doesn't say any kind of estimate